THE COMMODITIES CLAUSE

I. THE CLAUSE IN CONGRESS

Long prior to the agitation which finally resulted in the Hepburn Act of 1906, it had been a widespread belief that our railroads were practicing a form of actual discrimination which was not then reached under existing law. Roads interested (whether directly, or by stock ownership, or through officers, or otherwise) in mining coal or in producing other commodites had so used their strategic positions as to freeze out competitors and practically to monopolize the business. Notwithstanding common knowledge of this situation, the Hepburn bill when introduced (House Bill No. 12987) contained no provision to cover the case, and the matter came up in the form of an amendment in the committee of the whole of the Senate, May 7, 1906.

It is difficult to assign the credit (if credit there be) for the authorship of this clause. It is known as the Elkins amendment, because it was introduced by Senator Elkins, who served as its parliamentary sponsor; but apparently he neither made the initial presentation of the matter nor framed the phraseology of the clause in its final form.[1] As introduced, the clause read as follows:

> It shall be unlawful for any common carrier subject to the provisions of this act, unless authorized by its charter to do so, to engage, directly or indirectly, in the production, manufacture, buying, furnishing, or selling of coal or coke or any other commodity or commodities of commerce in com-

[1] As early as February 27, 1906, an amendment dealing with this matter had been offered for printing by Senator Clay (see *Cong. Record,* XL, 3038). The more immediate forerunners of Senator Elkins' action were such events as the Tillman-Gillespie resolution asking the Interstate Commerce Commission to investigate the whole question of the coal monopoly (*ibid.,* p. 6500), and a series of petitions, presented by Mr. Tillman, voicing the complaints of a number of the victims of the practices above referred to (*ibid.,* pp. 6565, 7011). As regards phraseology, the original Elkins amendment was later abandoned and a substitute measure prepared by Senator McLaurin, aided possibly by Senator Culberson and others, was finally accepted (*ibid.,* pp. 6494, 6563, 6569, 7011).

petition with any shipper or producer on its line or lines: *Provided,* That nothing in this act shall be construed to prevent a carrier from mining coal exclusively for its own use.[2]

This wording, especially the use of the phrase "directly or indirectly" immediately after the word "engage," seems to indicate that the senator then contemplated a complete "divorce of transportation and production," even prohibiting to the carrier the device of stock-ownership in the producing corporation. This interpretation is strengthened by an examination of the arguments advanced by Mr. Elkins where he showed that the phrase "unless authorized by its charter to do so" was intended to care for existing vested rights [3] and it is further strengthened by reference to his statement of a purpose "to confine the railroads to the legitimate business for which they are incorporated . . . . and forbid them engaging in any other business." [4]

The debate of the first day developed almost exclusively in a spirit of approval of the general purpose of the clause, and of attempts to secure a phraseology that would so state the enactment as to make certain of its constitutionality. To secure this, some senators thought the prohibition should be directed toward the "engaging in interstate commerce;" [5] others held that the prohibition should be limited to the carrying (in interstate commerce) of the particular commodity. As far as real opposition to the general intent of the clause is concerned, little or none developed and the only change of significance was the omission of the words "unless authorized by its charter to do so," to which Mr. Elkins assented. This, of course, would make serious trouble for carriers already engaged in production, particularly if the device of stock-ownership were forbidden.

[2] Cong. *Record,* XL, 6455, 6456.

[3] *Ibid.,* pp. 6456, 6496, 6498, 6499.

[4] *Ibid.,* pp. 6456, 6460, 6498.

[5] The *Record* indicates that Senator Elkins accepted a substitute framed by Senator Clapp to this effect (XL, 6457, 6494, 6505, 6509). While Mr. Elkins later denied he had accepted it (*ibid.,* p. 6510), it is noticeable that on May 9 the presiding officer held that substantially the Clapp substitute was before the Senate (*ibid.,* p. 6551). As all this was later set aside for the McLaurin substitute (*ibid.,* pp. 6560–70), it seems unnecessary to burden the text with an account of this development.

When the debate was renewed on May 8, a very different tone came into the discussion. Perhaps Senator Tillman's warning of the previous day that haste should be made slowly had had some effect; perhaps some senators had become appalled at the size of the problem presented; others perhaps feared constitutional difficulties; and more sinister motives have been hinted at in the case of still others. However that may be, we find senators urging that the matter be postponed; that the clause be referred back to the committee on interstate commerce for consideration; that it come before the Senate as a separate bill; that the matter be laid on the table. Suggestions, amendments, points of order became so numerous that the Senate was in confusion, and the day closed with little progress made.[6]

The next day the clause was again taken up. It was soon agreed that it should go into effect[7] July 1, 1909, and then a determined effort was made to refer the whole matter to the committee on interstate commerce. When this attempt had been defeated, Senator Elkins suddenly offered to modify his own amendment by offering a substitute (apparently framed by Senator McLaurin) as follows:

> From and after May 1, 1909 [changed later to 1908], it shall be unlawful for any common carrier to transport from any state, territory, or district of the United States, to any other state, territory, or district of the United States, or to any foreign country, any article or commodity manufactured, mined, or produced by it or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary or used in the conduct of its business as a common carrier.[8]

This McLaurin-Elkins substitute for the Elkins amendment was adopted by the Senate in committee of the whole, May 9, 1906,

[6] The debate of May 8 may be found in the *Record,* XL, 6494–6514.

[7] Senator Dryden seems to have been the first to notice that it was but just that the carriers should have considerable time in which to adjust themselves to this regulation (*Record,* XL, 6494). The date first moved was July 1, 1911 (*ibid.,* p. 6506.) This was too remote to meet with approval and many others were suggested. There seems to have been no significant reason why the date May 1, 1908, was finally adopted. That time was stated in the substitute that Mr. Elkins finally offered (*ibid.,* pp. 6561, 6568).

[8] *Ibid.,* pp. 6560, 6561. See also note 1.

by a vote of 67 to 6, 16 not voting.[9] It will be observed that it contained the essence of the present clause, but what did it mean? Did the expression "in which it may have any interest, direct or indirect" forbid an interstate carrier from carrying in interstate commerce coal, e. g., mined or owned by a coal company in whose stock the carrier had made investments? None of the senators cared to say. It may or may not be significant that a member of the minority (Senator Culberson) presented a substitute providing for such a prohibition which was decisively defeated by a vote of 62 to 11, 16 not voting.[10]

This ended the career of this particular clause in the committee of the whole. When the Elkins amendment came before the Senate, May 17, Senator Tillman pointed out that "this amendment would not prevent the ownership of coal properties by the ownership of stock in coal companies; it would not prevent the control of coal companies by officials of railway companies; it would not touch the ownership of railroads by coal companies or the common ownership of railroad companies and coal companies" and offered the following:

After May 1, 1908, it shall be unlawful for any common carrier to engage in the transportation of interstate commerce, if such common carrier shall at the time be interested, directly or indirectly, by stock-ownership or otherwise, in the article or property which is the subject-matter of such commerce, or if it be interested at the time, directly or indirectly, by stock-ownership or otherwise, in the mines or factories producing such commerce; or if at the time any officer, director, agent, or employee of such common carrier be interested, directly or indirectly, by stock-ownership or

[9] *Ibid.*, p. 6570.

[10] *Ibid.*, pp. 6566–68. The text of the Culberson substitute ran: "It shall be unlawful for any corporation, association, or joint-stock company engaged as a common carrier in foreign or interstate commerce to engage, directly or indirectly, through its officers, agents, representatives, employees, directors, or corporations organized for the purpose or otherwise, in the production, manufacture, buying, furnishing, or selling of coal, coke, or other commodity of commerce to be transported by and for it as a common carrier beyond the state or territory where such coal, coke, or other commodity of commerce is produced, manufactured, bought, or the possession thereof is obtained by said corporation, association, or joint-stock company." It will be noticed that this forbad the carriers to "engage in the production," etc. Undoubtedly many senators voted against this because they thought such power had not been conferred upon Congress.

otherwise, in the business of buying or selling such article or property which is the subject-matter of such commerce, or in the mines or factories producing the same; or if at the time stockholders owning more than 10 per cent. of the capital stock of such common carrier be interested, directly or indirectly, in the business of buying or selling such article or property which is the subject-matter of such commerce, or in the mines or factories producing the same.[11]

This was rejected by a vote of 42 to 23, 24 not voting, and the Elkins amendment, adopted May 9, was adhered to with but two modifications. One was the insertion of the words "other than timber and the manufactured products thereof."[12] The other was a verbal change in the last sentence of the clause.

The later parliamentary history of this particular part of the Hepburn Act has to do with the work of the conference committee. As the bill was a House bill, the House disagreed to all the Senate amendments and the differences were threshed out in conference meetings from which the "commodities clause" emerged in the following form—which is, of course, its form today:

From and after May 1, 1908, it shall be unlawful for any railroad company[13] to transport from any state, territory, or the District of Columbia to

[11] This substitute and the events connected with its rejection are treated in the *Record,* XL, 7011–14.

[12] This timber-exception clause had an interesting history. Senator Tillman seems first (May 7) to have mentioned the lumber situation (*Record,* XL, 6460). In the committee of the whole there was some little discussion of the matter but it was not until the bill came before the Senate (May 17) that a formal amendment excluding timber from the operation of the act was offered. apparently the Senate was quite convinced as to the wisdom of this exclusion for it was done by a viva-voce vote with very little discussion (*ibid.,* pp. 7012–15). May 28, Senator Tillman discovered this had been done and sought in vain to have the words "other than timber and the manufactured products thereof" eliminated (*ibid.,* p. 7529). In the first conference meeting, however, this was done and it resulted in quite a discussion (June 6), when western senators took up cudgels for the lumber industry (*ibid.,* pp. 7930, 7933, 7981–83). The words were reinserted in the second conference.

[13] The change from "common carrier" to "railroad" in the second conference and to "railroad company" in the third, led to an interesting debate. Senator Tillman started the discussion by charging that the Standard Oil Company "had got in its work" so that pipe lines should not come under the prohibition (*Record,* XL, 9101). The main part of the debate may be found in *ibid.,* pp. 9101–15, 9250–57, 9641–50.

any other state, territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

By way of summary, one may ask what was the intent of the legislators (Senate)? No one knows. An examination of the debate does not enable one to state positively that there is some particular interpretation which the legislature had in mind. As the case later turned out, the significant question is whether the Senate sought to prevent an interstate carrier from carrying in interstate commerce goods produced or owned by a company in the stock of which the carrier had made investments. Affirmatively, it may be argued that as originally introduced the clause seemed to have had that intent, and as the debate developed those in charge of the clause gave no intimation that any new position had been taken. The provision that the clause should not take effect for two years seems to indicate that drastic action was intended. Further, some senators seem to have had that impression,[14] and that was clearly the impression the popular mind had gained. Negatively, it is to be said that in view of the opposition developed on May 8 and 9 it may be assumed that the Senate thought there had been a shifting to a less drastic measure, else the final vote on the clause would not have been so overwhelmingly in its favor. As regards the time for taking effect, two years would not be too long for carriers who were *also* coal companies to reorganize. Again, senators fre-

[14] There is little doubt that the Senate thought the measure before it May 8, 1906, forbad the carrier to own stock of the producing corporation. (See, e. g., the remarks of Senators Knox, Teller, Foraker, and Dick in *Record,* XL, 6495–97). As regards the clause in its final form the remarks of Senator Bailey on May 6, 1909, after the Supreme Court had rendered its decision, are worthy of note: "The court has held that the act does not include the case where a railroad company owns the stock of a corporation which mines or manufactures or produces these articles. . . . . In view of the decision of the court it seems necessary, if the purpose of Congress is to be made effective, that a further amendment to the law shall be proposed and adopted."

quently pointed out [15] that the clause did not forbid such stock-ownership, and the Supreme Court could quite properly point out that two distinct proposals to forbid such ownership had been decisively defeated. Of course, this may have been party domination, but certainly ample warning was given so that had the Senate desired to put the matter beyond all doubt, it had the opportunity to do so. A study of motives in such a case is worse than useless.

II. THE CASE IN THE CIRCUIT COURT [16]

On January 17, 1907, the Attorney-General of the United States gave notice that the government would bring suit to test the validity of the law as stated in the "commodities clause" before asking for penalties for violation. This was done in the interests of fair play since the penalties were heavy and the interests involved were so great that the railroads could not afford to take a false step in the matter.[17] In accord with this policy, shortly after May 1, 1908, the Attorney-General of the United States filed in the Circuit Court of the Eastern District of Pennsylvania bills in equity and petitions for mandamus against the Delaware & Hudson Co., the Erie Railroad Co., the Central Railroad of New Jersey, the Delaware, Lackawanna & Western Railroad Co., the Pennsylvania Railroad Co., and the Lehigh Valley Railroad Co. The cases were confessedly test cases and were all heard and considered together. The government was not seeking to enforce any penalties, but merely to settle the meaning and constitutionality of the commodities clause.

There was little or no dispute as to facts. (1) The defendant carriers were operating, and long prior to May 8, 1906, had been operating, railroads in the anthracite district of Pennsylvania. They were carrying and had been carrying, in interstate commerce, anthracite coal that apparently came under the pro-

[15] See note 11. See also the remarks of Senators McCumber (*Record*, XL, 7017), Fulton (*ibid.*, p. 7983), Elkins (*ibid.*, p. 9251, 9650), Long (*ibid.*, p. 9256), and LaFollette (*ibid.*, p. 9650).

[16] *U. S.* v. *Delaware & Hudson Co.*, Circuit Court, Eastern District, Pennsylvania, September 10, 1908. *164 Fed. Rep.*, pp. 215–59.

[17] *Journal of Accountancy*, VIII, 9.

hibitions of the commodities clause, and certainly did so as the clause was interpreted by the government. (2) Prior to the passage of the Hepburn Act this business had been considered lawful; indeed it had been the confessed policy of Pennsylvania and other states to encourage transportation companies to invest in coal lands as a means of developing natural resources. (3) The carriers had made extensive investments in coal properties under the authorization of state law. These investments had been made in various forms. In some cases a carrier owned and worked coal lands directly; in others it had leased coal properties; in others it owned stock (sometimes all, sometimes a majority, sometimes a minority holding) of coal companies which owned and worked the coal properties. (4) The matter was of serious consequence to the defendants. Practically speaking, this coal could be carried to market only by these railroads and the carrying was of tremendous importance to the railroads, financially considered. "Approximately four-fifths of the entire production of anthracite coal was transported in interstate commerce over the defendant roads . . . . and of this four-fifths from 70 to 75 per cent. was produced either directly by the defendant companies or through the agency of their subsidiary coal companies." [18]

As the Circuit Court saw it, it was not a difficult matter to arrive at the meaning of the clause:

> The legislative will could hardly be expressed more unequivocally. There is no room for doubt as to the meaning of and practical effect of the clause in question. By it, each of the defendants is forbidden to transport in interstate commerce any of the coal (*a*) "mined or produced" by it; (*b*) "mined or produced under its authority;" (*c*) "which it may own in whole or in part;" or (*d*) "in which it may have any interest, direct or indirect; except such as is necessary or intended for its own use in the conduct of its own business."
>
> It results, therefore, that the coal described in the foregoing categories is outlawed in interstate commerce, and must remain so, unless the defendants can divest themselves of all title or interest in the coal, coal lands, or coal companies, from which the markets in other states have been so largely supplied. The enforcement of the act must, of necessity, result either in

[18] For a detailed statement of the facts as regards each carrier see *164 Fed. Rep.*, pp. 218–25, or *Sen. Doc. 37*, 61 Cong., 1 Sess., pp. 3–8.

the defendants holding their coal properties and refraining from transporting coal to other states, and confining themselves to the mining of such coal as may be used in the state of Pennsylvania, or in their divesting themselves of all title or interest, direct or indirect, in said properties by sale or surrender thereof, as they may be able to accomplish the same.[19]

This of course upheld the contention of the government as to the meaning of the clause and was unmistakably the interpretation which had obtained general acceptance in the popular mind.

With this interpretation before it, the court did not hesitate to declare the clause unconstitutional. It held that the power conferred by the commerce clause of the constitution is not unlimited, but is limited by the other provisions of that document—for example, by the fifth amendment:

In the opinion of this court, the enactment in question is not a regulation of commerce, within the proper meaning of those words, as used in the commerce clause of the Constitution, and therefore not within the power granted by that clause. It never has been decided that the power conferred upon Congress to regulate interstate commerce may be so expanded by construction as to warrant the prohibition of such commerce under all circumstances; and to us it does not seem to be reasonably possible that it should be.[20]

The court felt that it is one thing to prohibit commerce under exercise of the war power (embargo act), or to prohibit traffic *malum in se* (lottery tickets), or to prohibit certain traffic with the Indians who are wards of the government. It is quite another thing to prohibit the coal traffic in question in this case. Whatever might be the decision "where property had been acquired by the carriers subsequent to the passage of the act" (and the court did not attempt to pass upon this) the clause

is unconstitutional and void as applied to railroad companies which, under the sanction and encouragement of state laws, had more than fifty years before its enactment become the owners of coal lands in such state, and by themselves, or subsidiary companies of which they owned the stock, developed mines thereon, and constructed railroad lines thereto at great expense, and engaged extensively in the mining of coal, a large part of which was necessarily marketed in other states, and which could not practically be transported, except over their own lines, nor marketed within the state, as depriving such companies of their liberty and property without due process of law, in violation of the fifth constitutional amendment.[21]

[19] *164 Fed. Rep.*, p. 225. [20] *Ibid.*, p. 229. [21] *Ibid.*, p. 215.

The court disallowed the contention of the government that "this power of congress is equivalent to the police power as exercised by the states" and so might be exempted from the limitations of the fifth amendment. It held that even if it were so equivalent, the enactment would be "reviewable by the courts to determine whether it is within the power granted as so limited by the constitution itself, and a legitimate and reasonable exercise thereof," [22] and the court made it very clear that it did not consider the commodities clause a legitimate and reasonable exercise of such power. It also disallowed the contention that since Congress may remove an obstruction to navigation, it could therefore term "a theretofore lawful and harmless social or business situation an obstruction" and avoid the prohibitions of the fifth amendment.

The power of Congress under the commerce clause of the Constitution to regulate interstate commerce does not include the power to entirely exclude from such commerce an article or commodity which is a legitimate and useful subject of commerce, and not inimical to public safety, health, or morals, save when, and because, it is the property of a certain class of owners.[23]

Comment upon the finding of the Circuit Court would be superfluous. The facts suffice. It upheld the drastic government *interpretation* of the clause and declared the clause unconstitutional.

III. THE CASE IN THE SUPREME COURT

The case was, of course, appealed to the Supreme Court of the United States. May 3, 1909, Mr. Justice White delivered the opinion.[24] It established a new interpretation of the clause, reversed the finding of the Circuit Court as regards constitutionality, and left the roads in a position where they are not particularly harmed by the commodities clause. The significant work of the highest court was that of interpretation. It pointed out that the government's contention that the clause forbade

[22] *Ibid.* [23] *Ibid.*

[24] At the time of writing the case has not been reported. It may be found in full in the *Congressional Record* for May 6, 1909, or in *Sen. Doc. 37*, 61 Cong., 1 Sess. The title of the case is *U. S. ex. rel. the Attorney-General of the United States, Plaintiff in Error* v. *The Delaware & Hudson Co., etc.*

(among other things) carriers from handling in interstate commerce goods which they may have owned or in which they may have had an interest, or which had been produced by a corporation in which the carrier was a stockholder, would, if granted, necessitate the consideration of grave constitutional questions. The court would have to decide:

1. Whether the power of Congress to regulate commerce embraces the authority to control or prohibit the mining, manufacturing, production, or ownership of an article or commodity, not because of some inherent quality of the commodity, but simply because it may become the subject of interstate commerce.

2. If the right to regulate commerce does not thus extend, can it be impliedly made to embrace subjects which it does not control, by forbidding a railroad company engaged in interstate commerce from carrying lawful articles or commodities because, at some time prior to the transportation, it had manufactured, mined, produced, or owned them, etc.? And involved in the determination of the foregoing questions we shall necessarily be called upon to decide: (*a*) Did the adoption of the Constitution and the grant of power to Congress to regulate commerce have the effect of depriving the states of the authority to endow a carrier with the attribute of producing as well as transporting particular commodities, a power which the states from the beginning have freely exercised, and by the exertion of which governmental power the resources of the several states have been developed, their enterprises fostered, and vast investments of capital have been made possible? (*b*) Although the government of the United States, both within its spheres of national and local legislative power, has in the past for public purposes, either expressly or impliedly, authorized the manufacture, mining, production, and carriage of commodities by one and the same railway corporation, was the exertion of such power beyond the scope of the authority of Congress, or what is equivalent thereto, was its exercise but a mere license, subject at any time to be revoked and completely destroyed by means of the regulation of commerce?[25]

These questions the court made no attempt to answer for it held that if the clause was susceptible of any other interpretation which would not give rise to such weighty constitutional questions, it was the duty of the court to follow such an interpretation. In pursuit of this policy it noted that the clause was ambiguous; that it "disjunctively applies four generic prohibitions; that is, it forbids a railroad carrier from transporting in interstate commerce articles or commodities (1) which it has

[25] *Sen. Doc.* 37, 61 Cong., 1 Sess., p. 10.

manufactured, mined, or produced; (2) which have been so mined, manufactured or produced under its authority; (3) which it owns in whole or in part; and (4) in which it has an interest, direct or indirect." [26] This, if literally followed, would permit a carrier to carry goods which it had purchased and afterward sold before transporting them, but would not permit such transportation if it had manufactured the goods! Such an interpretation the court deemed absurd.

We think our duty requires that we should treat the prohibitions as having a common purpose; that is, the dissociation of railroad companies prior to transportation from articles or commodities, whether the association resulted from manufacture, mining, production or ownership, or interest, direct or indirect. . . . . We then construe the statute as prohibiting a railroad company engaged in interstate commerce from transporting in such commerce articles or commodities under the following circumstances and conditions: (*a*) When the article or commodity has been manufactured, mined, or produced by a carrier or under its authority, and at the time of transportation the carrier has not in good faith before the act of transportation dissociated itself from such article or commodity; (*b*) when the carrier owns the article or commodity to be transported in whole or in part; (*c*) when the carrier at the time of transportation has an interest, direct or indirect, in a legal or equitable sense, in the article or commodity, not including, therefore, articles or commodities manufactured, mined, produced, or owned, etc., by a bona-fide corporation in which the railroad company is a stockholder.[27]

Taking this interpretation, the court held the clause to be constitutional; to be "within the power of Congress to enact as a regulation of commerce." Among the minor findings, it held that the exclusion of timber was within the power of Congress; that the contention of the Delaware & Hudson Co., that it was

[26] *Ibid.*, p. 11.

[27] *Ibid.*, pp. 15, 16. The dissenting opinion of Justice Harlan is worth noting: "In my judgment the act, reasonably and properly construed according to its language, includes within its prohibitions a railroad company transporting coal, if at the time it is the owner, legally or equitably, of stock—certainly, if it owns a majority or all the stock—in the company which mined, manufactured, or produced, and then owns the coal which is being transported by such railroad company. Any other view of the act will enable the transporting railroad company, by one device or another, to defeat altogether the purpose which Congress had in view, which was to divorce, in a real, substantial sense, production and transportation, and thereby to prevent the transporting company from doing injustice to other owners of coal" (*ibid.*, p. 18).

a coal company and not a railroad company as the term is used in the clause, was without merit; and that the constitutionality of the clause concerning penalties need not be settled until an attempt should be made to enforce them.

The highest court has spoken. It matters little that the learned judges adopted an interpretation which had received little attention in all the previous agitation and litigation. It matters less what intent Congress may have had, or what the popular interpretation may have been. The situation is now much what it was before the "commodities clause" became law. (1) The railroad companies have escaped practically unscathed. They need to provide simply that the *carrying corporation* does not, *at the time of transportation,* own the goods carried. It is absurdly easy to arrange that these goods shall be owned by a *subsidiary* corporation, or to sell them before transporting them. (2) We have little new knowledge as to the power of Congress under the "commerce clause." The court made it quite clear that it did not attempt to consider the constitutional questions which would arise if the government interpretation were followed. The impression that the court implied that it would regard as constitutional a future "commodities clause," framed so as to express the government interpretation, is quite erroneous. (3) Opportunity for sober second thought has been given. No one questions that the clause was adopted in the hope of stopping real evils. Whether that clause, as popularly interpreted, employed a wise method is another matter. He who believes that a rigid matrix should not be prepared for a developing industrial situation does not regret that the Supreme Court adopted a new interpretation. He does not regret that other, and less rigid, methods of reaching the evils here involved may now claim consideration.

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